Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of The United States

77-542

JAMES D. FURRATE,

Petitioner

v.

UNITED STATES

APPENDIX A
TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 76-3084

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES D. FURRATE,

Defendant-Appellant

Appeal from the United States District Court for the Northern District of Texas

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(March 31, 1977)

BEFORE BROWN, Chief Judge, and RONEY and HILL, Circuit Judges.

PER CURIAM: AFFIRMED.

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 76-3084

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES D. FURRATE,

Defendant-Appellant

(August 8, 1977)

PER CURIAM: Petition for Rehearing and Petition for Rehearing En Banc is DENIED.

PROCEEDINGS

MR. KOCH: Your Honor, the next case on the docket is US versus James D. Furrate. And he is represented by Mr. Holley.

Your Honor, the Government might advise the Court it's our intention only to arraign Mr. Furrate on Counts No. 1, 2, 3 and 4. It's our intention to dismiss Counts 9, 10, 11 and 12 if he persists in a guilty plea upon completion of sentencing.

THE COURT: 1, 2 and 3?

MR. KOCH: No, we will arraign him on 1, 2, 3 and 4.

THE COURT: All right.

MR. KOCH: And dismiss the remaining counts.

THE COURT: All right.

MR. KOCH: In United States of American versus James D. Furrate, Criminal No. 3-76-113, the Grand Jury charges:

(Count No. 1 was read by Mr. Koch as filed.)

THE COURT: Mr. Koch, I think that you can summarize the other three if its satisfactory with Mr. Furrate.

May he summarize it?

MR. FURRATE: Yes, that's fine.

THE COURT: You have read it yourself, haven't you?

MR. FURRATE: Yes, Your Honor.

THE COURT: All right.

(Counts 2, 3 and 4 were summarized by Mr. Koch.)

MR. KOCH: Mr. Furrate, I would advise you that on each one of these counts the maximum penalty that the Court can impose is a $10,000.00 fine or one year incarceration in the Federal Correctional Institution or both, plus the costs of the prosecution for each count, should you be found guilty. That would make a maximum penalty that the Court could impose of a $40,000.00 fine or four years incarceration in a Federal Correctional Institution or both, plus the costs of the prosecution.

I would further advise you that you have a constitutional right to a jury trial. You can either enter a plea of guilty or not guilty this morning. If you enter a plea of guilty you would automatically be assigned a jury trial unless you and your trial counsel waived that right in writing.

Can you tell us what your age is, please?

MR. FURRATE: 37.

MR. KOCH: All right. Do you understand what you're charged with in each of the four counts?

MR. FURRATE: Yes, sir.

MR. KOCH: Do you understand the maximum penalty that the Court could impose?

MR. FURRATE: Yes, sir.

MR. KOCH: And do you understand you do have a constitutional right to a jury trial?

MR. FURRATE: Yes, sir.

MR. KOCH: All right. Thank you.

JAMES D. FURRATE,

BY THE COURT:

Q Mr. Furrate, did you hear the U.S. Attorney read Count 1 of the Indictment?

A Yes, Your Honor.

Q And did you hear him summarize Counts 2, 3 and 4 of the Indictment?

A Yes, Your Honor.

Q Did you understand them?

A Yes, Your Honor.

Q Have you had the advice of counsel?

A Yes, I have.

Q Do you understand the maximum penalty?

A I do.

Q And do you understand your right to a jury trial?

A Yes, I do.

Q Well, understanding the charge, understanding your rights and the maximum penalty, do you wish to plead guilty or not guilty?

A I wish to plead guilty, Your Honor.

Q Do you make that plea freely and voluntarily?

A I do.

Q Has anyone talked you into pleading guilty against your own belief about it?

A No.

Q Do you make that plea simply because you know yourself to be guilty?

A Yes, Your Honor.

Q Now, the U.S. Attorney announces that Counts 9, 10, 11 and 12 will be dismissed when you are sentenced if you continue to plead guilty. Has he made any other promises to you?

A No, Your Honor.

Q And do you understand that he has agreed to do that?

A Yes, I do understand.

THE COURT: Hold up your right hand.

(The Defendant Mr. Furrate was duly sworn by the Court.)

Q (By The Court) During the year 1969 did you have a gross income of $13,039.00?

A Yes, Your Honor.

Q Did you know that you were required by law to file an income tax return?

A Yes, Your Honor.

Q Did you fail to file an income tax return on or before April the 15th, 1970?

A Yes, Your Honor.

Q Did you know that you were supposed to?

A Yes, I did know that.

Q On Count 2 did you know that you — during the year 1970 did you have a gross income of $15,766.00?

A Yes, Your Honor.

Q And did you know that you were required to file an income tax return before April the 15th, 1971?

A Yes, Your Honor.

Q And did you fail to do so?

A I did.

Q And during the year 1971 did you have an income of $16,569.00?

A Yes, Your Honor.

Q And did you fail to file an income tax return before April the 17th, 1972?

A Yes, Your Honor.

Q And during the year 1972 did you have a gross income of $18,175.00?

A Yes, Your Honor.

Q And did you fail to file a return prior to April the 16th, 1973?

A Yes, Your Honor.

Q And did you know that you were required to file such an income tax return for the years just mentioned?

A Yes, Your Honor.

THE COURT: I find you guilty on your plea of guilty and on your admission of the facts. I will ask you to see one of the probation officers over here before you leave. You will be sentenced on July the 9th at 2:00 o'clock.

MR. KOCH: Your Honor, we would also ask that Mr. Furrate stop by the marshal's office up on the 16th floor so they can process him through there.

THE COURT: All right.

(End of proceedings.)

PROCEEDINGS

MR. ETHINGTON: The next case on the docket, Your Honor, is United States of America versus James D. Furrate, and his lawyer is Grady Lamar Holley.

THE COURT: Do you have anybody here to speak for you?

MR. FURRATE: No, Your Honor.

MR. HOLLEY: Your Honor, may I add that he is estranged from his wife.

THE COURT: I know that.

MR. HOLLEY: And that's — —

THE COURT: I am familiar with that situation. I have her on next.

JAMES D. FURRATE,

BY THE COURT:

Q What would you like to say for yourself?

A One of the reasons I think, as stated in the Internal Revenue report, for failure to file on time was that I did not know that you could file the return without sending in the money, which was one of the primary reasons that they were filed late. Once I found out you could file when I hadn't, I made preparations to file them and did file them, and as of today all my returns, including my estimated 1976 returns have been filed.

Q You know, the thing that concerns me even more

than your failure to file the income tax returns is that you, when it was called to your attention you filed, that is according to the Indictment, you filed fraudulent returns. Now, you are not being prosecued on those, but the mere idea that you would file fraudulent returns after being warned to file your income tax return is something that concerns me.

A Well, Your Honor, of course I think that's the opinion of the Internal Revenue. I think at the time in which I filed I had been talking not only to Internal Revenue but the Federal Bureau of Investigation for a year and a half in regard to other people's returns and business activities, in regard to Federal housing projects, which in itself preciptated the review of my returns.

And knowing that I was being investigated, I certainly — it would certainly be dumb on my part to file a fradulent return when I know I am being investigated to start with. And during my audit in the presence of Mr. Tom Lynn and Ulysses Borg, the agents for Internal Revenue,

when some things were brought to my attention that I didn't have records on or had forgotten about, I asked if I could amend my returns. They said that it wouldn't be necessary, that they could be contacting me.

And a year and a half went by before an Indictment was brought down. And I asked if I could amend

my returns, and I was told not to do it, that I would be contacted. I cooperated with them not only in regard to my returns, but many other people, not only the Internal Revenue, but FBI. And I don't think I was trying to hide anything from them.

Q Is that all you have to say?

A Well, I think that one of the other reasons which part of the problem was that under pressure of a lot of financial pressures and family pressures from marital situation and the situation with stepchildren that my life was really in utter chaos about 24 hours a day, and this was one of those things that — steadily solving problems on a daily basis family situation. And the taxes weren't filed and weren't handled because I didn't know I could file them without sending in the money. And due to the family situation, I never had the money to pay the taxes. So they were put off hopefully until next week every time hoping that I would have the money to file them. And once I found out I could file them without sending in the money I filed them.

Q Did it ever occur to you to call the Internal Revenue and find out?

A No, it didn't. I had always, you know, before just sent in a check or money order or whatever, and I didn't have the check or money order to send in.

THE COURT: Let's see what your lawyer has to say.

MR. HOLLEY: May it please the Court, when I first met the Defendant, I interviewed him carefully. And he told me that this entire matter came from the very stressing family situation that he was involved in. He assumed a marriage where his wife, whom he claims is an alcoholic, had four children, and he started raising these four stepchildren. In addition to that he has full custody and did then of a 13 year-old daughter who is living with him now in Houston.

I found Mr. Furrate to be above average intelligence. I found him to be under quite a bit of strain as early as June of 1976.

I said to him, "If you are guilty of income tax evasion you better look into that and either try to get a defense or whatever might be appropriate. And he told me then that he had been advised by Mr. Tom Lynn and others in the Internal Revenue Service that he did not need to amend those '69, '70 and '71 returns. And I believed him. I don't want to put him in controversy with Mr. Tom Lynn, who I think is in the Courtroom, but that is what he told me.

Now, in the meantime, he has filed his '74, '73 and '75 returns. He has paid almost $32,000.00 in income

tax in cash, and I understand he has filed his '76 estimated.

He is a war veteran. He has no previous criminal history. I think the Court is well aware that what might be in the probation officer's report in regard to evasion of taxes is pure hearsay. He is not charged.

THE COURT: That's true.

MR. HOLLEY: — with that before the Court. I think he is a good father. The main thing, perhaps I could say in closing, is that the 13 year-old daughter would be here today except she is afraid to fly, and she is extremely, still very, very emotional. One of this man's problems, and I will be through, Your Honor, is that one of his stepsons was before you not long ago for bank larceny.

THE COURT: I put him on probation.

MR. HOLLEY: I don't know what Your Honor did. I didn't go that close. We do urge larceny, and we urge probation. I feel that I know a little bit about human nature, and I think this man can rehabilitate himself and become a useful citizen. Thank you.

JAMES D. FURRATE,

BY THE COURT:

Q Mr. Furrate, I believe you started a new business in Houston, is that right?

A Yes, Your Honor, I am self-employed.

Q What is it exactly?

A I do — I prepare contract documents for architects. I do their working drawings on a contract basis, work that they can't handle in their office. One or two man offices that can't afford to put on a staff to hire a short-term project, I do it on a contract basis for them.

Q Is there anything else you would like to say? Let me ask you, what provision will you make for your daughter if I place you in an institution?

A Well, I have a problem. When I did separate from my wife in Dallas I asked my daughter if she would like to live with her mother. She talked to her mother in California. She didn't want to live with her mother. Her mother is — she is a registered nurse, is attending UCLA law school, and just really is too busy to be a mother. And my daughter doesn't want to live with her.

I really don't know. My parents, my father is 75 and my mother is 76. I have one sister who lives in Massachusetts. I really don't know what I would do. I've had custody of my daughter since she was one year old when I got a divorce from my first wife.

THE COURT: Well, I will give you a little bit of time to see if you can't place her, make some sort

of provision. But I do sentence you to six months in the custody of the Attorney General on Count 1, and I sentence you to six months on Count 2 to run concurrent with Count 1.

On Count 3, imposition of sentence is suspended, and you are placed on probation for three years. On Count 4 the imposition of sentence is suspended, and you are placed on probation for three years to run concurrent with the sentence in Count 3.

And if I didn't say it, I will say again, I will say it now, that the sentence in Count 3, which is three years probation, is consecutive with the sentence in Counts 1 and 2. And I presume you want to dismiss the other counts?

MR. ETHINGTON: Yes, Your Honor.

THE COURT: Now, you can report to the marshall on Monday, August the 2nd at 10:00 o'clock. Now, that will give you time to make some arrangements with regard to your business and with regard to your daughter.

Is there any question that you wish to ask? I'll ask you to go up to the marshal's office and see if they have any requests to make of you.

MR. FURRATE: Yes, ma'am.

MR. ETHINGTON: Excuse me, Your Honor, I didn't hear whether or not you recommended a particular institution.

THE COURT: No, I didn't.

MR. ETHINGTON: Could I have the record reflect that those are Counts 9, 10, 11 and 12, Your Honor, that we move the Court to dismiss?

THE COURT: Yes.

MR. ETHINGTON: Thank you.

THE COURT: No, I'll let them decide, because he lives in Houston, and there may be some institution down there that they would prefer to designate.

MR. ETHINGTON: Yes, ma'am.

(End of proceedings.)

A. Excuse me, in that conversation I had brought up the question to him about the plea of the not filing charges, and at that time he told me that I wanted to make sure of what I was pleading guilty to. And he told me that not filing a tax return was a felony, and that filing it late was a misdemeanor.

And I said, well, I had talked to a friend of mine that said they didn't agree with that, and I just wanted to make sure. And he told me it was a felony. And so subsequently I have been told by other counsel that filing a late tax return is only a penalty case because it's not a misdemeanor, it's a penalty.

Q. When was this conversation?

A. This was the conversation two days before we came up here for sentencing.

Q. I see. When —

A. I have a tape recording of that conversation, by the way.

Q. When had it been determined that you were going to plead guilty, or when had this conversation —

A. Well, I was under the opinion that what I was pleading guilty to was correct from advice of counsel, and I subsequently — I didn't understand really what I was pleading guilty to. I thought that it was a misdemeanor filing a late tax return, and that's

what — my first meeting with Mr. Koch in his office, I told him I really didn't want to fight the Government on those charges because I felt that I was guilty of filing my return late, but I had a good reason for doing it.

Q. I see. What was — now, getting back to this conversation prior to your plea, what else was said during this conversation? This is the third conversation you had.

A. That's all. It only lasted about two minutes.

Q. I see. Did you talk to him after you were sentenced?

A. Well —

Q. I am sorry, did you talk to him after you had pled guilty?

A. Yes, I talked to him one more time before sentencing, and that was in the back of the Courtroom prior to coming up here to be sentenced.

Q. I see. And what was —

A. He had just come from presentencing hearing, and my comment to him was if there was any possibility at all of me going to jail I will reverse my plea to not guilty. And he said no, he said, "I see no reason why the Judge won't give you probation."

And I said, "Well, if you have got any doubts